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09/721,512	11/22/2000	Norbert Wolters	08876-US	2610

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EXAMINER

MAMMEN, NATHAN SCOTT

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/721,512
Filing Date: November 22, 2000
Appellant(s): WOLTERS ET AL.

MAILED

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GROUP 3600

Kevin Moriarty
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 2, 2004, and the order returning undocketed appeal to examiner, mailed September 15, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellants' statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-21 stand or fall together because appellants' brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is not correct. In a telephone interview on April 20, 2004, appellants agreed to authorize an examiner's amendment to claims 1 and 2 to correct inconsistencies in claim language. In both claims, the amendment changed "feeding element" to "feeding device." Claim 1, the sole independent claim, now reads as follows:

1. A feeding and picking device for feeding and picking a standing agricultural crop wherein individual plants in the crop are provided with plant stalks, the device comprising a rotating feeding device having a feeding radius, the rotating feeding device grasp plant stalks and directs the plant stalks to a picking device which separates useable parts from the plant stalks, a chopping device chops the plant stalks, the chopping device has a chopping radius that overlaps the feeding radius of the feeding device.

Claim 2, which stands or falls with claim 1, now reads as follows:

2. A feeding and picking device as defined by claim 1 wherein the feeding device acts as a counterknife to the chopping device.

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(9) Prior Art of Record

4,236,369	Decoene	12-1980
WO 99/03323	Wiegert	1-1999
AT 301234*	Leblhumer	8-1971
6,032,444	Herron et al.	3-2000
4,148,175	Miller	4-1979

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by WO 99/03323, cited by Applicant. The WO 99/03323 publication discloses a feeding and picking device for feeding and picking a standing crop. The device comprises a rotating feeding device (18, 19) having a feeding radius. The feeding element grasp plant stalks and directs the plant stalks to a picking device (10, 11) which separates useable plant from the plant stalks. The device also comprises a chopping device (22) that chops the plant stalks. The chopping device has a radius (21) that overlaps the feeding radius of the feeding element.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Decoene (U.S. Patent 4,236,369). The Decoene '369 patent discloses a feeding and picking device for feeding and picking a standing agricultural crop. The device comprises a rotating feeding device (48) having a feeding radius (i.e., the circumference which defines the radius of action). The rotating feeding element grasp plant stalks and directs the plate stalks to the picking device (3) which separates

* This foreign reference was applied to claim 6. An English translation of this reference has not been provided since claim 6 stands or falls with claim 1, the sole independent claim. In addition, the Order Returning Undocketed Appeal to Examiner did not request a translation of this document. Therefore, it is believed that a translation is unnecessary for the Board's consideration of the instant appeal.

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the useable parts from the plant stalks (i.e., the bottom, root-portion of the plant stalks). A chopping device (50) chops the plant stocks. The chopping device has a chopping radius (i.e., the circumference) that overlaps the feeding radius of the feeding device. The chopping and feeding axes correspond to one another.

Claims 2, 3, 5, 7, 9, 10 are rejected under 35 U.S.C. 102(b). These rejections are set forth in prior Office Action, Paper No. 15.

Claims 4, 6, 8, 11-21 are rejected under 35 U.S.C. 103(a). These rejections are set forth in prior Office Action, Paper No. 15.

(11) *Response to Argument*

The crux of both issues on appeal is the whether claim 1 is to be given its broadest reasonable interpretation. It is the examiner's duty to give claim 1 its "broadest reasonable interpretation consistent with the specification." M.P.E.P. §2111 (quoting In re Prater, 416 F.2d 1393, 1404-05 (CCPA 1969); In re Hyatt, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). The examiner's interpretation of claim 1 is extremely straightforward and consistent with appellant's specification. This straightforward interpretation "'serves the public interest by reducing the possibility that claims, finally allowed, will be given a broader scope than is justified,' ... and it is not unfair to applicants because 'before a patent is granted the claims are readily amended as part of the examination process.'" Hyatt, 211 F.3d at 1372 (quoting from In re Yamamoto, 740 F.2d 1569, 1571 (Fed. Cir. 1984), and Burlington Indus., Inc. v. Quigg, 822 F.2d 1581, 1583 (Fed. Cir. 1987)).

(a) Claim 1 is Anticipated by WO 99/03323

As stated above and shown in the chart below, WO 99/03323 discloses each and every element of claim 1. Nevertheless, appellant tries to distinguish WO 99/03323 from claim 1 based on the argument that “the oblong path does not define a feeding radius” and thus cannot be overlapped by the chopping radius. Brief at 4. Appellants’ argument is incorrect.

First, it should be noted that appellants have misrepresented the examiner’s position. Appellants are initially correct in stating that “[i]t is the examiner’s position that each of the rotating gathering chains (18, 19) of WO 99/03323 have a feeding radius.” Brief. at 4. But appellants continue by suggesting that it is the examiner’s position is that “[t]he center of the feeding radius is defined by the cross hair locating the center of the feed chain sprocket.” Id. This statement is not the examiner’s position. Instead, the examiner’s position, as maintained in the last two office actions is that “the feeding radius is defined as the radius of action of the feeding elements, i.e., the area bounded or circumscribed by the feeding elements.” Office Action of 11/12/02, paper no. 12. Accordingly, the figure on page 5 of appellants’ brief, labeled as “Examiner’s Definition of Feeding Radius” is incorrect and misleading.¹

Whether WO 99/03323 anticipates claim 1 turns on how feeding radius is defined. If feeding radius is defined as requiring a circular feeding device, as appellants would suggest, then WO 99/03323 does not anticipate. But if radius is given a broader interpretation that encompasses the elliptical feeding device disclosed by WO 99/03323, then that reference clearly

¹ The examiner does not agree that such an interpretation of WO 99/03323 would not be a reasonable interpretation. Indeed, this interpretation was initially applied by the examiner in the first Office Actions, papers nos. 7 and 9. But the examiner believes that this would not be the most direct interpretation. A more straightforward interpretation of WO 99/03323, consistent with appellants’ own specification, is to use the “radius of action” definition for feeding radius. Accordingly, this definition is the sole definition relied on by the examiner and the only issue on appeal with respect to the rejection of claim 1 under WO 99/03323.

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anticipates. But even though appellants suggest that radius requires a circle, Brief at 5, it should be noted that appellants, when faced with a broader definition, never amended their claim to state that the feeding device is circular.

The basis for defining feeding radius as being the area bounded or circumscribed by the feeding elements comes directly from appellants' specification. Appellants' state that "[t]he fingers 44 and 46 **define the radius of action** of feeding elements 14 and 16." Specification at 6 (emphasis added). In applying the WO 99/03323 patent, the examiner is stating that the carriers 20 define the radius of action of feeding element (i.e., feeding chain) 18, 19. Furthermore, evidence of the broad meaning of "radius" can be found by consulting common dictionaries. "Radius" is defined as "3c: **a bounded or circumscribed area**," Merriam-Webster's Collegiate Dictionary, 10th Ed., or "3. **a measure of range of activity or influence**," American Heritage Dictionary, 2nd College Ed. (emphasis added). Thus, in view of appellants' own specification and common dictionary definitions, it is entirely appropriate to apply a broad interpretation of radius that encompasses the radius of action of the feeding elements in WO 99/03323.

(b) Claim 1 is Anticipated by U.S. Patent No. 4,236,369 to Decoene

The Decoene '369 patent also discloses each and every element of claim 1. Again, appellants argue limitations not present in the claims. Specifically, appellants argue that the picking device of Decoene "do[es] not separate the usable parts (cobs, seed pods and heads of grain) from the stalks...." Brief at 6. Claim 1, however, never states that the useable parts of the plants are the "cobs, seed pods and heads of grain." Thus, appellants' attempt to argue elements not present should not be sustained.

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The Decoene forage harvester, like all forage harvesters, severs the upper portion of plant stalks from their root and crown, the very bottom portion of the plant stalks. The Decoene forage harvester then feeds this upper portion of the plant stalks rearwardly to be chopped and then discharged into a trailer. Decoene, col. 4, lines 46-47. Inherently, these forage harvesters leave the bottom portion of the stalk, the portion closest to and extending in the ground, in the field. Therefore, the Decoene forage harvester “separates the useable portion,” as required by claim 1.

The following chart demonstrates how each element of claim 1 is found in the WO 99/03323 reference and the Decoene ‘369 patent:

Applicant’s Claim 1	WO 99/03323	U.S. Patent No. 4,236,369 to Decoene
A feeding and picking device for feeding and picking a standing agricultural crop wherein individual plants in the crop are provided with plant stocks	“[A]n apparatus for harvesting maize and similar cereals particularly as an attachment for combine harvesters or field harvesters....” Translation, page 3.	“Row crop attachments for harvesting machines.... In the preparation of forage from ‘stalk’ crops , such as corn or sorghum, the entire stalk, including the grain, is cut and fed to a chopping or cutter unit....” Col. 1, lines 6-13.
the device comprising a rotating feeding device having a feeding radius,	Feed chains (18, 19) rotate about their axes in opposite rotational directions. The feed chains have carriers for feeding the stalks. Translation, page 7. The outer extent of the carriers on the feed chains defines a feeding radius, as shown by the phantom lines in Figure 4.	“The conveyor means 15 are in the form of a plurality of outwardly extending lugs (48) which extend from the respective drums 31 to 36 into the stalkways....” Col. 6, lines 27-29. The outer extent of the extending lugs inherently defines a circular feeding radius. See Fig. 2.
the rotating feeding device grasp plant stocks and directs the plant stocks to a picking device which separates	The feed chains (18, 19) grasp the stalks and feed them to the picking rollers (10, 11), which picks the useable parts from	“[T]he stalks are first moved along the stalkways 12, 13 by the lugs 48 of the first drums 31, 34.” Col. 7, lines 43-44.

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useable parts from the plant stalks,	the plant. See Translation, page 5.	“The feed rolls 3 pull the stalks, butt ends first, in a rearward direction...” Col. 7, lines 55-57. The lugs 48 and feed rolls 3 only transport the severed portion of the stalks. Col 7, line 39. Non-severed stalk – the portion in the ground and the crown (the portion immediately above the ground) – are left in the field.
a chopping device chops the plant stocks,	The rotating blades (22) of the chopping unit “chops the stalk of the harvest when passing through the picking rollers....” Translation, page 7.	“The crop cutter means 14 comprise a pair of conventional crop cutter discs....to cut the standing crop by shearing action. Col. 6, lines 40-46.
the chopping device has a chopping radius that overlaps the feeding radius of the feeding device.	The outer extent of the rotating blades (22) define a chopping radius, represented by circle referenced as 21. This chopping radius overlaps the feeding radius of the feeding device. See Figure 4.	The radius of the crop cutting discs (50) and the feeding device (48) overlap. See Fig. 2.

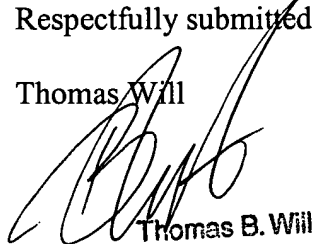
As it has been shown, both WO 99/03323 and the Decoene ‘369 patents disclose each and every element of claim 1, thus anticipating the claimed invention.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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October 21, 2004

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